



**State  
Bar of  
Michigan**

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OFFICE OF  
THE CHIEF JUSTICE

October 1, 2003

Corbin Davis  
Clerk of the Court  
Michigan Supreme Court  
P.O. Box 30052  
Lansing, MI 48909

**Re: 2003-15 - Proposed Amendment and Redesignation of  
Administrative Order No. 1993-5 (State Bar of Michigan Activities)**

Dear Clerk Davis:

The State Bar of Michigan is grateful that the Supreme Court has published for comment revisions to AO 1993-5 as recommended by the Board of Commissioners of the State Bar. We believe the proposed changes will greatly improve the effectiveness and accountability of the State Bar, its sections and committees, in carrying out the mandate of the Supreme Court Rules Concerning the State Bar of Michigan to aid in promoting improvements in the administration of justice and advancements in jurisprudence, in improving relations between the legal profession and the public, and in promoting the interests of the legal profession in this state. The State Bar has already taken a number of steps to increase member information about public policy issues of interest to lawyers, and to facilitate more timely discussion in the legal community and within and between sections, committees, and State Bar leadership on public policy issues. We have amended our bylaws to require greater accountability, and have created an online template for sections and committees to record the positions they have adopted. These are important first steps in a fundamental public policy shift called for in our Strategic Plan from a top-down mentality to a program more directly informed by member input. We have had one general training session with section and committee leaders and are meeting individually with each section and committee to explain the changes that are in the works. We have adopted internal operating procedures (attached) to facilitate timely responses. All these steps are anchored by the new Public Policy Resource Center inaugurated on the State Bar website in August. Our initiatives will be even more effective if the changes proposed for AO 1993-5 are adopted. We contemplate that when all the changes are fully implemented, the policy statements of the State Bar and its sections will be more substantive and timely, and will better reflect consensus of the profession and of practice specialties.



The proposal published by the Court differs in only minor respects from the proposal submitted to the Court by the State Bar, and we support the majority of the published changes as an improvement to our submitted proposal. The State Bar also supports the intent of the III (F) provisions concerning the information sections must include in communications concerning ideological activity. The State Bar has already amended its own bylaws to address the issue of confusion between section and State Bar positions (attached). However, the State Bar believes that the detailed requirements about section (and other State Bar entity) advocacy reside more appropriately in State Bar bylaws than in an administrative order. Our new bylaw amendments are more specific about the circumstances under which a section (or committee) must apply the requirements, and thus, we believe, provide better guidance. They apply whenever a section "expresses a formal opinion about a public policy issue on behalf of a Section or State Bar entity of the State Bar to an individual or body external to the State Bar," whereas III (F) would apply whenever a section engages in ideological activity." Our bylaws are less detailed, however, in what must be included in written communications, requiring the section to distinguish the section from the State Bar in any written communication on a section position to an external entity by stating, if the State Bar has no position on the matter, that the position expressed is that of the State Bar entity only and that the State Bar has no position on the matter. If the State Bar does have a position on the matter, the communication must include the position of the State Bar. Our bylaws do not require information about the total membership of the section, the process of arriving at a position, the members in the decision-making body, and the vote for the position. Such detail was included in the original bylaw change proposal, but the Board of Commissioners was persuaded by sections that including such information in all written communications on public policy matters would be cumbersome, awkward, and impractical. Instead, we contemplate that as the new reporting mechanisms of our bylaws are implemented our website will become a convenient source for both our membership and the public of detailed information about sections' decision-making processes and positions. Our bylaws also do not include a requirement concerning the relative size of the typeface in which required information must be rendered.

Because the bylaw requirements are so new, we are not yet certain about the extent to which they will achieve the intended effect, and we will be closely monitoring whether further modifications are desirable. The Supreme Court's satisfaction with section communications to the Court about administrative matters is of course a paramount consideration, but we will also be inquiring of the Legislature and the media whether the enhanced information we now require is effective in clarifying the distinction between the sections and the State Bar as a whole.

Again, let me thank the Supreme Court for its timely response to our request for changes to AO 1993-5.

Sincerely,



Janet Welch  
General Counsel

#### Attachments

cc: Linda Mohny Rhodus  
John T. Berry, Executive Director  
Scott S. Brinkmeyer, President



## INTERNAL OPERATING POLICY ON COMMITTEE PUBLIC ADVOCACY

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### Internal Operating Procedures for Public Policy Communication and Advocacy

*Because of its advantages in terms of speed, record retention, and dissemination of information, e-mail is the preferred method of formal communication between the State Bar and committee chairs.*

#### Responsive Positions

- When a proposed court rule or administrative order is published for comment, or the State Bar staff identifies a newly-introduced piece of legislation as Keller-permissible and within the jurisdiction of a committee, the State Bar will notify the committee chair by e-mail. The notice will include a hyperlink to the text and status of the court rule/administrative order or legislation. If action by the Board of Commissioners or Representative Assembly on the proposed court rule or legislation is contemplated on a date certain, the notice will include that date and a date by which the committee's comments are needed.
- A committee may submit comments and recommendations on any proposed court rule/administrative order or legislation to the appropriate Commissioner Standing Committee at any time, whether or not the committee has received notification from the State Bar.
- If the comment period for a proposed **Court rule/administrative order** will expire before a regularly scheduled meeting of the Commissioner Standing Committee in whose jurisdiction the rule or order falls, either a special meeting will be scheduled to consider the proposal, followed by Executive Committee consideration, or the committee will be advised that it may take and directly advocate a position to the Supreme Court on the proposal, following the requirements of Bylaw Article VIII.
- If the committee has information that immediate action on **legislation** is desirable, it may request expedited action on the part of the State Bar, or authority to advocate its position directly to the Legislature. The request should be as specific as possible about the reason for the request and the date by which action should be taken.
- When the State Bar receives a request for expedited action, staff will immediately prepare for the Executive Director a recommendation on a course of action. The recommendation will be copied to the Board of Commissioners and the committee chair. The recommendation will advocate one of the following responses:
  - Approval of the request by the Executive Director, after consultation with the Chair of the appropriate Commissioner Standing committee.
  - Approval of the request by the Executive Director, after consultation with the State Bar officers.
  - Approval of the request by the Executive Committee.
  - Denial of the request.
- A request for expedited action will be answered within 5 working days of the receipt of the request.

### Pro-active Positions

A committee recommendation that advocates initiating court rule/administrative order or statutory change may not be advocated by the committee before consideration by the Board of Commissioners or Representative Assembly.

**BYLAW ARTICLE VIII ADOPTED 6/13/03**  
(Article IX eliminated; subject matter incorporated into Art. VIII)

**Article VIII—Section And State Bar Entity Activity; Public Policy**

**Section 1—Annual Reports.**

For purposes of this Article:

- (1) “State Bar entity” means a body created by action of the Board of Commissioners or Representative Assembly, and any suborganization of such a body, but does not include a Section or suborganization of a Section.
- (2) Every Section and State Bar entity so directed by the Board of Commissioners or Representative Assembly shall annually make a written report containing a summary of its activities during the association year which shall be submitted to the Secretary on or before May 31. Annual reports may not exceed five 8 1/2" x 11" pages unless a waiver of this limitation is approved by the Executive Director.
- (3) “Keller-permissible policy” means subject matter upon which the State Bar is permitted to advocate by order of the Supreme Court.<sup>1</sup>
- (4) “Publicly advocate” means to express a formal opinion about a public policy issue on behalf of a Section or State Bar entity of the State Bar to an individual or body external to the State Bar.

**Section 2—Reports Containing Recommendations.**

- (1) Every Section or State Bar entity requesting State Bar endorsement of a recommended position shall submit a report to the Board of Commissioners and/or Representative Assembly using a template format provided by the State Bar. The report may be submitted electronically. Any report containing a recommendation shall:
  - (a) Contain no language that may be construed as committing the State Bar of Michigan to any policy not contained in the recommendation.
  - (b) Include the process by which the position was taken and the vote by which the position was adopted.
  - (c) Contain a statement of the reasons for the recommendations as well as the arguments against, if any.
  - (d) Describe why the recommendation should be considered Keller-permissible policy.
  - (e) Include the text of any legislation, court rule, or administrative regulation that is the subject of the request or is otherwise referenced in the report. If the report is submitted electronically, the text and references may be included by hyperlink.
  - (f) If the State Bar already has a policy concerning the subject matter of the policy position submitted, include a copy of the position of the State Bar, include an analysis of whether the recommended position and the State Bar’s position are in conflict.
  - (g) Contain an estimate of any expenditures that might be required of the State Bar of Michigan.
  - (h) Not exceed the equivalent of five 8 1/2" x 11" typewritten pages unless a waiver of this limitation is obtained from the Executive Director.
- (2) A report requesting State Bar endorsement of a position by the Board of Commissioners or Representative Assembly shall be reproduced and distributed by the State Bar of Michigan to the members of the body from whom the endorsement is requested prior to the session at which the report is to be considered. If the report is from a Section, the expense of the reproduction and distribution shall be borne by the Section. A report to the Board of Commissioners shall be provided to the members of that body at least 10 days before the meeting at which the matter is to be considered, and a report to the members of the Representative Assembly at least 30 days before the meeting at which the matter is to be considered.

**Section 3—Waiver.**

No written reports shall be received or considered by the Board of Commissioners or Representative Assembly that do not meet the

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<sup>1</sup> Supreme Court Administrative Order 1993-5 provides:

The State Bar of Michigan shall not, except as provided in this order, use the dues of its members to fund activities of an ideological nature that are not reasonably related to:

- (a) the regulation and discipline of attorneys;
- (b) matters relating to the improvement of the functioning of the courts, judicial efficacy and efficiency;
- (c) increasing the availability of legal services to society;
- (d) regulation of attorney trust accounts; and

the education, ethics, competence, integrity and regulation of the legal profession.

requirements of Section 2 of this Article, unless the Board or Assembly authorizes a waiver by a two-thirds vote. Any Section or State Bar entity seeking a waiver of any of the requirements shall give written notice stating its reason to the Board or the State Bar entity on Rules and Calendar of the Representative Assembly at least forty-eight hours before the meeting at which the report is to be considered. A waiver shall not be granted by the Board or Assembly unless action by the Board or Assembly at its forthcoming meeting is desirable because of pending legislation or unless such action for some other reason is considered by the Board or Assembly to be of sufficient importance to justify its consideration at the meeting.

#### **Section 4—Related State Bar entities or Sections.**

When the State Bar receives a report requesting State Bar endorsement of a position by the Board of Commissioners or Representative Assembly, the State Bar shall post the report on its website, and notify any Section or State Bar entity whose jurisdiction includes subject matter affected by the report of its posting and of the opportunity for comment.

#### **Section 5—Consideration by Representative Assembly.**

The determination of the Board of Commissioners with respect to any recommendation submitted by a Section or Committee may be placed on the calendar of the Representative Assembly by action of the Board or upon written petition of one-third of the members of the Section Council or Committee concerned or upon motion duly made and seconded by members of the Assembly other than members of the Section or Committee concerned. The action of the Representative Assembly with respect to any such matter shall be final and shall constitute the action of the State Bar of Michigan.

#### **Section 6—Representation of the State Bar of Michigan**

A Section or State Bar entity or its members, individually or collectively, shall not represent the State Bar of Michigan before any legislative body, in any court or before any other tribunal, in any other forum, or to the public, unless authorized to do so by the Board of Commissioners. State Bar policy may be adopted and declared only by the Board or the Representative Assembly.

#### **Section 7 – Public Advocacy by Sections**

(1) The only State Bar bodies permitted to take positions on policy issues other than Keller-permissible policy issues are Sections funded by the voluntary dues of their members.

A Section shall notify the Executive Director of the adoption of a public policy position within 10 days of taking the position. A Section may not publicly advocate a public policy position unless the following requirements are met:

- (a) The subject matter is within the jurisdiction of the Section.
- (b) The policy position is adopted in accordance with the Section's bylaws and the requirements of this Article;
- (c) The Executive Director of the State Bar has received the following by mail or e-mail:
  - (i) a copy of the report, recommendation, amicus brief, or other written declaration of the policy;
  - (ii) a statement that the requirements of this Article have been satisfied.

(2) A State Bar Section may not advocate a policy position on behalf of the Section that is inconsistent with State Bar policy, unless expressly authorized to do so by a majority vote of the Board of Directors or Representative Assembly.

(3) If the public policy position is Keller-permissible and the Section is requesting that the State Bar take a position on the policy, the Section must comply with the requirements of section 2.

(4) A Section that has adopted a position on a Keller-permissible policy in accordance with this Article may publicly advocate the position on behalf of the Section unless expressly directed otherwise by the Board of Commissioners, the Representative Assembly, or, if the matter requires urgent attention, the Executive Committee of the State Bar.

(5) Upon receiving the notice and information on a Keller-permissible policy required by subsection (1), the Executive Director shall cause the matter to be included for notice on the next available agenda of the Board of Commissioners and Representative Assembly, and, if, in the determination of the Executive Director the matter requires urgent attention and consideration, on the next available agenda of the Executive Committee of the Board of Commissioners.

#### **Section 8 – Public Policy Activity by Entities other than Sections Funded by Voluntary Member Dues**

A State Bar entity created by the Board of Commissioners or Representative Assembly may make recommendations to the Board of Commissioners or Representative Assembly on a Keller-permissible policy as directed by the Board of Commissioners or Representative Assembly, respectively. The State Bar entity shall not publicly advocate a public policy position that has not been adopted by the Board of Commissioners or Representative Assembly unless authorized to do so.

#### **Section 9 – Conditions for Public Advocacy**

(1) A Section or entity of the State Bar that publicly advocates a public policy position on a matter must include the following information in its written communication to any external entity concerning the public policy position:

- (a) If the State Bar has no position on the matter, a statement that the position expressed is that of the State Bar entity only, and that the State Bar has no position on the matter.
- (b) If the State Bar has a position on the matter, a statement of the State Bar entity's position and a statement of the position of

the State Bar.

(2) In any oral public advocacy, entities of the State Bar are responsible for ensuring that the information above has been effectively communicated to the audience to which the advocacy is addressed.

(3) For written communications other than amicus briefs, a Section publicly advocating a public policy position shall also include the following information:

- (a) The number of members of the Section.
- (b) The process by which the position of the State Bar entity was taken.
- (c) The vote by which the position was adopted.

(4) If a Section advocates for a position in violation of any of the provisions of this Article, the position of the Section on the State Bar of Michigan website shall be removed from the website, and the Executive Director shall be responsible for correcting any misunderstanding or confusion that may have resulted from the violation.